Supreme Court, U.S.
FILED
MAY 19 2000
CLERK

(3)

No. 99-1349

IN THE
SUPREME COURT OF THE UNITED STATES

Matthew F. Hale,
Petitioner

v.

THE COMMITTEE ON CHARACTER AND FITNESS OF THE ILLINOIS BAR, and THE ILLINOIS BAR,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

REPLY TO BRIEF IN OPPOSITION

Robert Herman
Counsel of Record
Schwartz, Herman
& Davidson
University Club Tower
1034 South Brentwood
Suite 1800
St. Louis, Missouri 63117
(314) 862-0200

Anita Rivkin-Carothers
33 North LaSalle
Suite 3300
Chicago, IL 60602
(312) 641-2901

ATTORNEYS FOR PETITIONER

5pp

Respondents acknowledge their true intentions when they proclaim, "Illinois' legitimate interest in preventing racial discrimination outweighs [Petitioner's] interest in spewing racial venom." Brief in Opposition, p. 19. Respondents thereby directly address the important Constitutional question raised in the Petition for Certiorari: Whether the Illinois Bar may constitutionally exclude Petitioner on the basis of his beliefs.

Respondents' recitation of the record underscores the Illinois Bar's reliance on Petitioner's speech and views as the basis for his exclusion from the Bar. Respondents' Brief in Opposition invokes Petitioner's politically offensive speech and invites this Court to share in the Illinois Bar's moral outrage at Petitioner's views and rhetoric. Respondents' Brief in Opposition devotes many pages to discussion of the offensiveness of Petitioner's speech expressed in the Roberson letter (Brief in Opposition, pp.6-7), the offensiveness of Petitioner's rejection of the principles of Equal Protection (Brief in Opposition, pp.10-11), the offensiveness of the views expressed by Petitioner's World Church of the Creator and its supporters (Brief in Opposition, pp.8-9), the offensiveness of the racially motivated name-calling that was the basis for the order of protection (Brief in Opposition, p. 4), and the "disruptive behavior" consisting of "Nazi salutes," swastikas, using the term "Jew-Boy," and racist leafleting.[1] (Brief in Opposition, pp. 5-6).

The flood of ink Respondents devote to Petitioner's speech negates Respondents' repeated protestations that Petitioner's First Amendment Rights are not at issue.

---

[1] Respondents' cryptic reference to "violation of student handbook regulations," Brief in Opposition, p.6, is shown by the trial transcript to be distributing flyers without administration prior approval. Tr. 246.

When Petitioner's views and rhetoric are redacted, Respondents are left with citations to Petitioner's incidental arrests[2] and convictions for ordinance violations,[3] and allegations related to Petitioner's exercise of his Constitutional Rights.[4] None of these allegations are cited in any of the written decisions of the Illinois Bar as sufficient or independent grounds for Petitioner's rejection.[5] Respondents' attorneys should not now be allowed to dredge the record for grounds that were previously rejected by the Committee and Inquiry Panel.[6]

---

[2] The fact of arrest is itself meaningless. *Schware v. Board. of Bar Examiners*, 353 U.S. 232, 241, 77 S.Ct. 752, 757, 1 L.Ed. 796 (1957).

[3] Respondents concede that:

> [t]he Inquiry Panel attaches no significance to these convictions because countless individuals have been admitted to the Bar with more serious criminal violations. Additionally, the Inquiry Panel has doubts as to the legality or at least the appropriateness of these convictions because they related to the exercise of constitutionally protected activity and [Petitioner] may have been selectively prosecuted on account of his views. (Appendix D, p. 19a. ft.nt. 2.)

[4] The so-called obstruction of justice charge was based on Petitioner's 1991 statement in answer to police interrogation that he did not know who had possessed a gun. The conviction was overturned by the Illinois Court of Appeals because the statement was coerced from Petitioner in violation of his Constitutional Rights. Neither the written decisions of the Bar Committee, nor the Inquiry Panel, addressed this matter whatsoever, though it was disclosed by Petitioner and was the subject of testimony at the hearing.

[5] The Illinois Supreme Court has held that even a prior felony conviction will not automatically and necessarily preclude admission to the Illinois Bar. *In re Polito*, 387 N.E.2d 278, 281-82 (Ill. 1989).

[6] See *Konigsberg v. the State Bar of California*, 353 U.S.252, 258, 77 S.Ct. 722, 726, 1 L.Ed. 2d 810 (1957), where the Supreme Court rejected the California Bar's attempt to cast Konigsberg's rejection as a factual matter of state law for his "refusal to answer relevant inquiries" where "[n]either the Committee as a whole nor any of its members ... suggested that his failure to answer their questions was, by itself, a sufficient independent ground for denial of his application."

Respondents fail to identify any instance justifying the catchall, ambiguous accusation of Petitioner's "lack of candor."[7] Petitioner answered all questions posed to him by the application[8] and at the hearing. Respondents' true complaint is that Petitioner failed to keep his "offensive" views to himself.[9]

Respondents' disapprobation of Petitioner's views and rhetoric is the basis for Petitioner's exclusion at every stage of the Illinois Bar's decision-making: from Petitioner's initial interview to these very proceedings. Respondents' Brief in Opposition is no exception.

While Respondents indignantly deny that Petitioner's exclusion is related to his exercise of First Amendment Rights, Respondents' acknowledgement that the basis of this case is "whether [Petitioner] can put aside his beliefs and comply with the rules of Professional Conduct," (Committee decision, App. C., p. 10a) belie their self-serving protestations.

Respondents and Petitioner both present the identical important constitutional issue to be resolved by this

---

[7] Candor, like the term "good moral character," is incapable of adequate definition and often used as a pretext for the punishment of constitutionally protected rights. *Konigsberg v. the State Bar of California*, 353 U.S.252, 262, 77 S.Ct. 722, 728, 1 L.Ed. 2d 810 (1957).

[8] Respondents' suggestion that Petitioner did not disclose arrests or convictions for ordinance violations is misleading. Petitioner accurately disclosed the fact of arrests and convictions for these ordinance violations, but the application supplement asked for disclosure of "criminal charges." Tr. 222. Ordinance violations are not considered criminal charges under Illinois law. *City of Chicago v. Pudlo*, 648 N.E.2d 135, 137 (Ill. App. 1995). Nor did either of the Bar's written opinions cite Petitioner for failure to adequately disclose any information.

[9] *See, e.g.*, Respondents' reference, Brief in Opposition, p. 9, to a character witness who had "reservations" about Petitioner's expression of racial prejudice. Tr. 32

Court: Whether the First Amendment allows the Illinois Bar to exclude Petitioner because his beliefs and advocacy run counter to the principles of racial equality to which the Bar aspires. This case rests squarely on Federal Constitutional issues and cannot be resolved as a matter of state law. Petitioner's Writ of Certiorari should be granted by this Court.

Respectfully submitted,

Robert Herman
Counsel of Record
Schwartz, Herman & Davidson
University Club Tower
1034 South Brentwood
Suite 1800
St. Louis, Missouri 63117
(314) 862-0200
ATTORNEY FOR PETITIONER